

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RECTANGLE MEDICAL DENTAL
PAYMENTS LLC, et al.,

Plaintiffs,

-against-

RETRIEVER MEDICAL/DENTAL
PAYMENTS LLC, et al.,

Defendants.

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**DECISION AND ORDER
UPON RECONSIDERATION**

21 Civ. 3378 (CS) (PED)

PAUL E. DAVISON, U.S.M.J.

On December 12, 2022, Judge Seibel referred this case to me for general pretrial supervision. Dkt. #74. Familiarity with the record is presumed.

On February 23, 2023, plaintiffs filed a letter motion (Dkt. #105) requesting, *inter alia*, an order compelling defendants to negotiate and apply search terms concerning Sections 2.3 and 3.2 of the ISO Agreement. Plaintiffs sought this discovery on the ground that “the parties’ interpretation of Section 2.3, which concerns pricing, and Section 3.2, which concerns marketing materials, are relevant to resolving the ambiguity concerning the parenthetical in Section 4.4.” Dkt. #105, at 1. At the conclusion of a discovery dispute hearing on March 15, 2023, I denied plaintiffs’ request. Dkt. #131, at 26 (ECF pagination).

By letter dated March 24, 2023 (Dkt. #129), plaintiffs sought reconsideration of my ruling. During a discovery dispute hearing on April 14, 2023 (on the record via Courtflow, but not yet transcribed), plaintiffs argued that they are entitled to discovery of internal communications concerning defendants’ understanding of what they were obligated to provide to plaintiffs under ISO sections 2.3 and 3.2, because that discovery would shed light on the parties’

understanding of section 4.4. Defendants offered to search for communications regarding pricing/marketing materials related to the four preferred relationships/endorsements which defendants had not disclosed to plaintiffs during the course of the ISO agreement. Plaintiffs argued that they were entitled to a broader search related to all of defendants' endorsements and preferred relationships, back to at least when defendants drafted the ISO agreement. I reserved decision pending review of, among other things, the transcript of Judge Seibel's April 13, 2023 pre-motion conference.

Upon review of the entire record, upon reconsideration, I conclude that plaintiffs are entitled to discovery of defendants' internal communications concerning ISO sections 2.3 and 3.2 relating to all of defendants' preferred relationships and endorsements (thirty-two in total), dating back to July 1, 2018. Accordingly, the parties are directed to meet and negotiate search terms which will effectuate discovery in accordance with this Decision and Order.

Dated: May 8, 2023
White Plains, New York

SO ORDERED

PAUL E. DAVISON, U.S.M.J.